

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RICHARD TUBBY

§

v.

§

CIVIL ACTION NO. 6:16cv972

DAVID ALLEN, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS WARDEN HARRIS AND TDCJ

The Memorandum Order dated May 2, 2017 (docket no. 28) is hereby **WITHDRAWN** and the following is substituted in its place. This Order shall be effective as of May 2, 2017.

The Plaintiff Richard Tubby, proceeding through retained counsel, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are former TDCJ Officer David Allen, Warden Todd Harris, and the Texas Department of Criminal Justice.

Tubby complains Officer Allen sexually assaulted him and Warden Harris interfered with the investigation of the assault. He also claimed Warden Harris and TDCJ had customs, practices, and policies of allowing the physical abuse of prisoners in the facility and covering up misconduct by officers. He asserted the prison officials created “makeshift showers” in the laundry area permitting certain chosen inmate to shower outside of the general shower area, giving these inmates more privacy, longer shower times, and “an ability for other private contact to take place outside the

standard shower area. As a result, Tubby stated Allen had the ability and facility to sexually abuse Plaintiff and other inmates as a condition of their confinement.

Warden Harris and TDCJ filed separate motions to dismiss the claims against them. After review of the pleadings, the Magistrate Judge issued Reports recommending that these motions be granted. No objections have been received to the Reports; accordingly, the parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the record in this cause and the Reports of the Magistrate Judge. Upon such review, the Court has determined that the Reports of the Magistrate Judge are correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Reports of the Magistrate Judge (docket no.'s 16 and 17) are **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the motions to dismiss filed by the Defendants Warden Todd Harris (docket no. 11) and the Texas Department of Criminal Justice (docket no. 10) are **GRANTED** and the Plaintiff's claims against these Defendants are **DISMISSED WITH PREJUDICE**. Warden Harris and TDCJ are **DISMISSED** as parties to the lawsuit. The dismissal of these claims and parties shall have no effect upon the Plaintiff's claims against Officer David Allen.

SIGNED this 8th day of May, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE